IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL WRIT PETITION NO.611 OF 1997

Smt. Farzana Dildar Mukadam & Anr. ...Petitioners
Vs.
The State of Maharashtra & Anr. ...Respondents

Mr.Sachin Pande i/by Madhvi Mhatre for the Petitioners.
Ms S.D. Shinde, A.P.P. for the Respondents.

CORAM : A.S.OKA, J.
DATED : JULY 21, 2005.

P.C.:

1. Heard learned Counsel appearing for the Petitioners. The Petitioners are the Applicants in an Application under section 125 of the Code of Criminal Procedure, 1973. After the said Application was contested by the Respondent No.2 who is the husband of the Petitioner No.1, by Judgment and Order dated 11th January, 1995, the learned Magistrate awarded maintenance at the rate of Rs.200/- per month to the Petitioner No.1 and maintenance at the rate of Rs.150/- each to the Petitioner Nos.2 and 3. The Petitioner Nos.2 and 3 are the daughters of the Respondent No.2. The Revision Applications were preferred by the Petitioners and the Respondent No.2 for challenging the order passed by the learned Magistrate. By a common judgment and order dated 16th November, 1995, the learned Sessions Judge dismissed both the Revision Applications and confirmed the judgment and order of the learned Magistrate.

2. The learned Counsel for the Petitioners submitted that the Revisional Court ought not to have accepted the evidence of the husband that he is a

driver and his monthly salary is Rs.1,200/-. He submitted that the Respondent No.2 was holding two auto rickshaws and therefore a sum of Rs.1,200/- could not have been taken as the total income of the Respondent No.2. He submitted that now the Petitioner Nos.2 and 3 have grown up and sum of Rs.150/-each per month is grossly insufficient for their higher education.

3. I have considered the submissions. The Petitioners came out with the case that the Respondent NO.2 was having two auto rickshaws. The said claim could not be substantiated by producing record from the R.T.O. to show that the Respondent No.2 was possessing two auto rickshaws. There was no material placed on record to show that the Respondent No.2 was having a coal business apart from auto rickshaws. The courts below have considered the evidence on record and have accepted the case of the Respondent No.2 that he is a tempo driver and is earning Rs.1,200/- per month. In the evidence of the Respondent No.2, he has stated that he performed his second marriage in the year 1990. Considering all these aspects, it is very difficult to disturb the finding recorded by the learned Judicial Magistrate which is recorded on the basis of the evidence which was on record at the relevant time. In a Writ Petition under Article 227 of the Constitution of India, no interference can be made as regards factual findings arrived at by the

courts below.

4. There is no merit in the Writ Petition and the same is dismissed.

5. In the event of the change of circumstances, it is always open for the Petitioners to take out appropriate application under section 127 of the Code of Criminal Procedure, 1973.

JUDGE